

### Remarks

In view of the above amendments and the following remarks, reconsideration and further examination are respectfully requested.

No claims have been canceled, and no claims have been added. Claims 1, 3 and 12 have been amended. It should be recognized that no new matter has been added by these amendments. Consequently, claims 1-18 are currently pending and under consideration.

The applicant first wishes to thank the Examiner for indicating on page 3 of the Office Action that claim 3 contained allowable subject matter. In the present response, claim 3 has been rewritten into independent form, and consequently, it is believed that independent claim 3 is in condition for allowance.

Independent claim 1 has been amended in order to further refine the recitation of its features and to correct a minor typographical error. It is believed that claim 1 in its current form is allowable over the references of record. For example, none of the references disclose or suggest that "said lateral members each being shaped to engage apophyseal rings of opposing vertebrae when said lateral members are in an extended configuration, said lateral members each having a lateral side with a curved shape that coincides in shape to the apophyseal rings" as recited in claim 1. With such a construction, the risk of subsidence of the implant into the vertebrae is reduced. In contrast, as can be seen in FIG. 1 of Biedermann et al. (U.S. Patent No. 6,176,882), the engagement members 60 and 61 are flat, and not curved. As a result, the implant in Biedermann et al. is unable to provide a large surface area that can be supported on the harder cortical bone of the apophyseal ring. For this and other reasons, it is submitted that independent claim 1 as well as its dependent claims are in condition for allowance.

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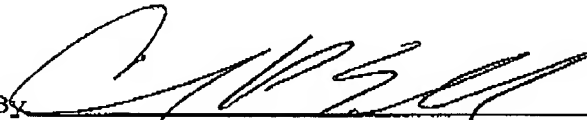
Independent claim 12 has been amended to further refine the recitation of its features. It is believed that independent claim 12 in its current form is allowable over the references of record. For example, none of the references of record disclose or suggest "expanding the wings from one another in a lateral direction between the opposing vertebrae with the expansion mechanism to an expanded configuration at which the wings each engage the apophyseal rings of both the vertebrae" as recited in claim 12. By expanding laterally in between vertebrae, the implant is able to be implanted less traumatically when in a compact configuration and is able to laterally expand between the vertebrae so that each wing contacts both vertebrae to provide increased stability for the implant. In contrast, the engagement members 60 and 61 in Biedermann et al. expand in a vertical direction between the vertebrae such that the teeth 68 on the engagement members 60, 61 project into only one of the vertebrae. Consequently, the engagement members 60, 61 in Beidermann et al. are not designed to expand laterally in between the vertebrae and engage both vertebrae to provide a stable support platform for the vertebrae. For this and other reasons, it is respectfully submitted that independent claim 12 and its dependent claims are in condition for loans.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

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In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and an early notice of allowance is earnestly solicited. If after reviewing this amendment the Examiner feels that any issues remain which must be resolved before the application can be passed to issue, the Examiner is invited to contact the undersigned representative by telephone to resolve such issues.

Respectfully submitted,

By 

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